



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Number: **201038015**
Release Date: 9/24/2010

Date: July 2, 2010

UIL: 501.06-03

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:
All

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Rob Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



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INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: July 2, 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B = State
C = Date
D = Name of Brand of Software
E = Name of For-Profit
F = Acronym name of Corporation
G = Corporation

UIL:

501.06-03

Dear :

We have considered your application for recognition of exemption from Federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(6). The basis for our conclusion is set forth below.

Issues

1. Do you qualify for exemption under section 501(c)(6) of the Code?
2. Do you qualify for exemption under section 501(c)(3) of the Code?

Facts

You, G, were incorporated as a domestic nonprofit corporation pursuant to the statutes of the State of B on date C. Article III of your Articles of Incorporation states, "This corporation is organized exclusively for charitable and educational purposes. More specifically, such purposes include but are not limited to fostering and promoting assistance, problem-solving, training, collaboration and cooperation among public and private K-12 educational organizations

Letter 4034(CG)(11-2005)
Catalog Number 47628K

that are users of software known as the D student information system, and sponsoring conferences and seminars to enhance the efficient and effective use of the D software by its member organizations.”

Article II of your bylaws state, “the purpose of the G shall be to improve the efficiency and effectiveness of D Products by E and to promote the sharing of information among its users by:

- (a) The exchange of information among D users through personal relationships, presentations, discussions, formal and informal meetings and publications;
- (b) The presentation and investigations of problems and solutions for the benefit of all members;
- (c) The improvement in the interface between members and E by establishing and prioritizing needs and requirements for inclusion into the D software or the proposing of additional systems and/or subsystems;
- (d) The development and promotion of professional standards within the D user community; and
- (e) The conduct of other activities as the membership shall adopt. Notwithstanding any other provision of these bylaws, the G shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as now enacted or hereafter amended. “

Your Articles of Incorporation and bylaws describe that you are organized under IRC 501(c)(3) of the Code; however, you submitted Form 1024, Application for Recognition of Exemption Under Section 501(a), requesting recognition of exemption under section 501(c)(6) of the Code.

Article III, Section 1 of the bylaws state,” the members of the G shall be those public and private K-12 educational organizations that are the signatory to a current license agreement with E to use D products and who pay dues to the organization in the manner imposed by the Board of Directors”.

Article VIII of your bylaws state that the Board of Directors shall consist of seven directors identified as officers and regional directors. Officers are president, vice president, secretary and treasurer. Regional directors include an eastern director elected by members from the US Eastern Time zone, a central director elected by members from the US Central and Mountain Time zone, and a western director elected by members from the US Pacific Time zone. A representative of E shall sit on the Board of Directors as a non-voting member and shall not be counted for purpose of constituting a quorum.

You have activities in the following two areas:

- 1- Provide an annual three day conference in May for public and private K-12 schools using the D student information system. The purpose of this activity is to exchange information through presentations, discussions, meetings, and trainings to become more familiar with the software product. The software developers also demonstrate new

enhancements and features of their upcoming release. An annual General Membership meeting is held to elect new officers and vote on any items brought forth by the Board of Directors.

- 2- Maintain a website as a tool for communication and problem solving. This site provides information on the upcoming F conference, email addresses of current board members, and a link to the Community Forum. The Forum provides a place for ongoing collaboration among D users as well as the opportunity to access presentation documentation from previous year's conferences. It provides a vehicle for surfacing technical and operational issues of concern to the entire D user community and the software developers. It acts as a clearinghouse for elevating problems and soliciting advice from users who may have encountered the problem and found a solution earlier. The website is maintained by a webmaster.

Revenues will come from conference fees and membership dues. Expenditures are for conference expenses and miscellaneous administrative costs.

Law

Issue 1

Section 501(c)(6) of the Internal Revenue Code provides exemption from Federal income tax for business leagues not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations state that a business league is an association of persons having some common business interests, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. The Regulations further state that the activities of a business league should be directed to the improvement of business conditions in one or more lines of business rather than the performance of particular services for individual persons. An organization whose purposes are to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

Rev. Rul. 58-294, 1958-1 C.B. 244, holds that an association of licensed dealers in a certain type of patented product did not qualify as a business league where the association owned the controlling interest in the corporation holding the basic patent, was engaged mainly in furthering the business interest of its member dealers, and did not benefit people who manufactured competing product of the same type covered by the patent.

Rev. Rul. 67-77, 1967-1 C.B. 138 holds that an association of dealers selling a particular make of automobile which engaged in financing general advertising campaigns to promote the sale of that particular make was held not exempt because it was performing particular services for its members rather than promoting a line of business, i.e., the automotive industry as a whole. Membership in the organization was restricted to dealers who held franchises for the sale of the automobiles designated in the area. Restriction of membership precludes exemption under section 501(c)(6) of the Code.

The holding also states that an organization applying for exemption under section 501(c)(6) of the Code should have activities that are directed toward the improvement of business conditions of one or more lines of business; as distinguished from the performance of particular services which are not entitled to exemption under section 501(c)(6).

Rev. Rul. 74-147, 1974-1 C.B. 136, holds that a non-profit organization whose members represent diversified businesses that own, rent, or lease digital computers produced by various manufacturers, and that is organized to improve the efficiency of its members' use of computers, qualifies for exemption under section 501(c)(6) for the Code. Rev. Rul. 74-147 states that the common business interest of the members of the organization is their common business problem concerning the use of digital computers. The primary objective of the organization is to provide a forum for the exchange of information that will lead to the more efficient utilization of computers by its members and other interested users, and thus improve the overall efficiency of the business operations of each.

Rev. Rul. 83-164, 1983-2 C.B. 95, holds that an organization whose members represent diversified businesses that own, rent, or lease computers produced by a single computer manufacturer does not qualify for exemption under section 501(c)(6) for the Code. The organization in this Rev. Rul. is distinguishable from the one described in Rev. Rul. 74-147.

All members of both organizations have a common business interest concerning the use of computers. The organization in Rev. Rul. 74-147 directs its activities to users of computers made by diverse and competing manufacturers, while the instant organization directs its activities to users of computers made by one manufacturer. By directing its activities only to the users of brand M computers, the instant organization is directing its activities towards the improvement of business conditions in only segments of the various lines of business to which its members belong.

National Muffler Dealers Association v. U.S., 440 U.S. 472 (1979), holds that an association of a particular brand name of muffler dealers does not qualify for exemption because the association is not engaged in the improvement of business conditions of a line of business.

In *National Prime Users Group, Inc. v. U.S.*, 667 F. Supp. 250 (D.C. MD 1987), the court holds that an organization that serves the needs of users of a specific brand of computer promotes only a segment of a line of business and is not exempt under IRC 501(c)(6).

In *Guide International Corporation v. U.S.*, 948 F.2d 360 (7th Cir. 1991), the court concluded that an association of computer users does not qualify for exemption under IRC 501(c)(6) because it essentially benefits users of IBM equipment.

In general, an organization that applies for recognition of exemption has the burden of proving that it clearly meets all the requirements of the particular section of the Code under which it has applied. See *Kenner vs. Commissioner*, 318 F. 2d 632 (7th Cir. 1963), and *Cleveland Coral Practical College vs. Commissioner*, 312 F. 2d 203, 206 (8th Cir. 1963).

Issue 2

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of

corporations organized and operated exclusively for charitable, scientific, or educational purposes, provided no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subsection, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 74-116, 1974-1 C.B. 127, holds that an organization whose membership is limited to organizations that own, rent, or use a specific type of computer and whose activities are designed to keep members informed of current scientific and technical data of special interest to them as users of the computer is not exempt under IRC 501(c)(3).

Application of Law

Issue 1

You are not as described in section 501(c)(6) of the Code because you are not organized and operated as a business league.

You are not as described in section 1.501(c)(6)-1 of the regulations because your activities are directed to the performance of particular services for the benefit of a particular software maker rather than the improvement of business conditions of one or more lines of business.

You are similar to the organizations described in Revenue Rulings 58-294, 67-77, and 83-164, in that, your activities are geared to members that are signatory to a current license agreement with only E. You were established so that users of D products could collaborate, share information of problems, and work together with E to enhance future development of the software. Users accomplish relationships, presentations, discussions, formal and informal meetings, publications, and the D forum. Your members are limited to only those that are the signatory to a current license agreement with E to use D products.

Your activities are distinguishable from those described in Revenue Ruling 74-147 because you serve the needs of the users as well as the maker of only D, a specific brand of software. You are engaged mainly in furthering the business interest of your members using D products owned by E. Your membership is made up of public and private K-12 educational organizations that use only D products. Therefore, you promote only the segment of a line of business and not improvement of business conditions of the industry as a whole.

You are similar to those entities described in *National Muffler Dealers Association*, *supra*, *National Prime Users Group, Inc.*, *supra*, and *Guide International Corporation*, *supra*. Your activities serve members, who use only D products that are owned by one company, E. You serve particular services toward one software maker, which does not represent one or more lines of business. Thus, you are not engaged in the improvement of business conditions of a line of business.

According to the findings in *Kenner vs. Commissioner*, supra, and *Cleveland Coral Practical College vs. Commissioner*, supra, you have the burden of proving that you satisfy the requirements of the particular exemption statute. Whether you meet this requirement is a question of fact. The facts demonstrate that your primary activities serve the maker of a particular brand of computer software. Thus, you do not satisfy the requirements under section 501(c)(6).

Issue 2

You are not as described in section 501(c)(3) of the Code because you are not operated exclusively for charitable, educational, or other exempt purposes.

You are not as described in section 1.501(c)(3)-1(c)(1) of the regulations because more than an insubstantial part of your activities is devoted to non-exempt purposes.

You are similar to the organization described in Revenue Rulings 74-116. Although you help your school members be familiar with and improve the efficiency and effectiveness of the use of D products, your activities do not negate the fact that, in form and substance, you provide a forum for the sharing of information among current users of a certain brand of computer software. Thus, you are not organized and operated exclusively for charitable and educational purposes as described in section 501(c)(3).)

Applicant's Position

You state that you meet the requirements of section 501(c)(6) of the Code and that the group does not "recommend" any product versus another. Additionally, each participating group is attending to improve all lines of operations within its organization that utilize the subject computer applications.

Service Response to Applicant's Position

Even if you do not "recommend" one product over another, you are established so that users of D could collaborate, share information of problems, and work together with E to enhance future developments of D software. You are not engaged in the improvement of business conditions of a line of business. You do not qualify for exemption because you essentially benefit the users of only D products and E, which owns the trademark and patent in D.

You limit your services to only users of one brand of computer software. You help to provide a competitive advantage to E and to its customers at the expense of E competitors and their customers that may use other brands of computer software. Your primary activity is to promote the common business interests of users of one particular brand of computer software and its maker; therefore, you do not qualify for exemption from federal income tax as a business league under section 501(c)(6) of the Code or as an educational organization under section 501(c)(3).

Conclusion

Based on the facts you have provided us in your application for exemption, you are not operating in accordance with 501(c)(6). You also do not qualify for exemption under section 501(c)(3).

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter.

We will consider your statement and decide if that information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". These items include:

1. The organization's name, address, and employer identification number;
2. A statement that the organization wants to appeal the determination;
3. The date and symbols on the determination letter;
4. A statement of facts supporting the organization's position in any contested factual issue;
5. A statement outlining the law or other authority the organization is relying on; and
6. A statement as to whether a hearing is desired.

The statement of facts (item 4) must be declared true under penalties of perjury. This may be done by adding to the appeal the following signed declaration:

"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."

Your appeal will be considered incomplete without this statement.

If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. To be represented during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter to you. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848 and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosure, Publication 892